

IC 25-37

ARTICLE 37. TRANSIENT MERCHANTS

IC 25-37-1

Chapter 1. Regulation of Transient Merchants by Local Governmental Units

IC 25-37-1-1

Short title

Sec. 1. This chapter shall be known as the "Transient Merchant Law of Indiana."

(Formerly: Acts 1955, c.345, s.1.) As amended by Acts 1982, P.L.154, SEC.129.

IC 25-37-1-2

"Transient merchant" defined

Sec. 2. "Transient merchant", when used in this chapter, includes all persons, firms, limited liability companies, and corporations, both as principals and agents, who engage in, do, or transact any temporary or transient business in this state, either in one (1) locality or in traveling from place to place in this state, offering for sale or selling goods, wares, or merchandise, and those who, for the purpose of carrying on such business, hire, lease, or occupy any permanent or mobile building, structure, or real estate for the exhibition by means of samples, catalogues, photographs, and price lists or sale of such goods, wares, or merchandise. The term does not include the following:

- (1) any person, individual, copartner, limited liability company, or corporation which grows the goods, wares, or merchandise that is sold or offered for sale;
- (2) a person who makes crafts or items by hand and sells them or offers them for sale;
- (3) an auctioneer who is licensed under IC 25-6.1;
- (4) a resident of the county in which the sale takes place who conducts a sale of tangible personal property for no more than four (4) days per calendar year;
- (5) an organization that is exempt from the Indiana gross retail tax under IC 6-2.5-5-26;
- (6) a person who:
 - (A) sells merchandise;
 - (B) offers to sell merchandise; and
 - (C) provides proof that the sale is being conducted as part of an activity sponsored by an organization described in subdivision (5);
- (7) a person who:
 - (A) organizes;
 - (B) sells merchandise at;
 - (C) offers to sell merchandise at; or

- (D) exhibits at;
a trade show or convention;
(8) except as provided in section 15 of this chapter, a person who holds a registered retail merchant's certificate under IC 6-2.5-8.

(Formerly: Acts 1955, c.345, s.2.) As amended by Acts 1982, P.L.154, SEC.130; P.L.158-1986, SEC.1; P.L.11-1987, SEC.28; P.L.48-1991, SEC.72; P.L.8-1993, SEC.400; P.L.19-1994, SEC.15.

IC 25-37-1-3

Necessity for license

Sec. 3. Except as provided in section 11 of this chapter, it shall be unlawful for any transient merchant to transact business in any county in this state unless such transient merchant and the owners of any goods, wares or merchandise to be offered for sale or sold, if such are not owned by the vendor, shall have first secured a license as herein provided and shall have complied with the other requirements of this chapter herein set forth.

(Formerly: Acts 1955, c.345, s.3.) As amended by Acts 1982, P.L.154, SEC.131; P.L.48-1991, SEC.73.

IC 25-37-1-4

Application for license; attached statements

Sec. 4. Any transient merchant desiring to transact business in any county in this state shall file application for a license for that purpose with the auditor of the county in this state in which such transient merchant desires to do business. The application shall state the following facts:

(a) The name, residence and post-office address of the person, firm, limited liability company, or corporation making the application, and if a firm, limited liability company, or corporation, the name and address of the members of the firm or limited liability company, or officers of the corporation, as the case may be.

(b) If the applicant is a corporation or limited liability company then there shall be stated on the application form the date of incorporation or organization, the state of incorporation or organization, and if the applicant is a corporation or limited liability company formed in a state other than the state of Indiana, the date on which such corporation or limited liability company qualified to transact business as a foreign corporation or foreign limited liability company in the state of Indiana.

(c) A statement showing the kind of business proposed to be conducted, the length of time for which the applicant desires to transact business, and if for the purpose of transacting such business any permanent or mobile building, structure or real estate is to be used for the exhibition by means of samples, catalogues, photographs and price lists or sale of goods, wares or merchandise, the location of such proposed place of business.

(d) A detailed inventory and description of such goods, wares, and

merchandise to be offered for sale or sold, the manner in which the same is to be advertised for sale and the representations to be made in connection therewith, the names of the persons from whom the goods, wares, and merchandise so to be advertised or represented were obtained, the date of receipt of such goods, wares, and merchandise by the applicant for the license, the place from which the same were last taken, and any and all details necessary to locate and identify all goods, wares and merchandise to be sold.

(e) Attached to the application shall be a receipt showing that personal property taxes on the goods, wares and merchandise to be offered for sale or sold have been paid.

(f) Attached to the application shall be a copy of a notice, which ten (10) days before said application has been filed, shall have been mailed by registered mail by the applicant to the department of state revenue. The said notice shall state the precise period of time and location from which said applicant intends to transact business, the approximate value of the goods, wares, and merchandise to be offered for sale or sold, and such other information as the department of state revenue of the state of Indiana or its successor may request or by regulation require.

(g) Said application shall be verified.

(Formerly: Acts 1955, c.345, s.4.) As amended by P.L.8-1993, SEC.401; P.L.192-2002(ss), SEC.166.

IC 25-37-1-5

Surety bond; agent for service of process; action upon bond

Sec. 5. (a) Except as provided in section 5.5 of this chapter, at the time of filing the application, the applicant shall also file and deposit with the county auditor a bond with sureties to be approved by the county auditor in the penal sum of seven hundred fifty dollars (\$750) or three (3) times the value of the goods, wares, and merchandise to be offered for sale or sold as shown by the inventory filed, whichever sum is greater, running to the state. The bond shall be forfeited and used for the benefit of:

- (1) any purchaser of goods, wares, or merchandise sold by the applicant, if the purchaser is awarded a judgment as a result of a cause of action against the applicant that was commenced within one (1) year of and that arose out of the sale;
- (2) the operating budget of the county's prosecuting attorney, if the applicant is found by a court to have violated section 9 of this chapter, although the amount forfeited under this subdivision may not exceed one-third (1/3) of the bond;
- (3) the state, any of its departments or subdivisions, or any unit of local government, if the applicant fails to pay all taxes due from the applicant to that governmental entity; or
- (4) a court in payment or partial payment of any fines that may be assessed by the court against the applicant, its agents, or employees for violation of this chapter.

However, the aggregate liability of the surety for all taxes, fines,

disbursements, and causes of action may not exceed the amount of such bond. There shall be no limitation of liability against the transient merchant or the applicant for the license.

(b) In such bond, the applicant and surety shall appoint the auditor of the county in which the bond is filed, the agent of the applicant, and the surety for the service of process. In the event of such service of process, the agent on whom such service is made shall, within five (5) days after the service, mail by ordinary mail a true copy of the process served upon him to each party for whom he has been served, addressed to the last known address of such party. Failure to mail the copy shall not, however, affect the court's jurisdiction.

(c) The state or any department or subdivision, municipal or otherwise, thereof or any person having a cause of action arising from or out of any sale or sales of goods, wares, or merchandise or against the applicant may join the applicant and the surety on such bond in the same action or may sue either such applicant or the surety alone. *(Formerly: Acts 1955, c.345, s.5.) As amended by Acts 1982, P.L.154, SEC.132; P.L.158-1986, SEC.2; P.L.221-1993, SEC.1.*

IC 25-37-1-5.5

Reduction and waiver of surety bond

Sec. 5.5. (a) Notwithstanding section 5 of this chapter, a county legislative body (as defined in IC 36-1-2-9) may annually:

- (1) set the amount of the bond required under section 5 of this chapter in any amount that is not greater than the amount required in section 5 of this chapter; or
- (2) waive the bond required under section 5 of this chapter.

(b) A county legislative body that reduces or waives the bond under subsection (a) must inform the auditor of the county of the following:

- (1) Whether a bond is required to be filed with an application with the auditor for a transient merchant license.
- (2) The amount of the bond if a bond is required.

(c) An applicant filing for a transient merchant license must do the following:

- (1) If filing for a transient merchant license with a county auditor who has been informed of a reduced bond under subsection (b), the applicant must file:

- (A) an application; and
- (B) the bond;

with the county auditor.

- (2) If filing for a transient merchant license with a county auditor who has been informed that a bond has been waived under subsection (b), the applicant must file only an application.

(d) A bond required under subsection (a)(1), although not in the amount required under section 5 of this chapter, will for all other purposes be treated like a bond issued under section 5 of this chapter. *As added by P.L.221-1993, SEC.2.*

IC 25-37-1-6

License fee

Sec. 6. Except as provided in section 6.5 of this chapter, the applicant desiring to file an application with the auditor for a transient merchant license shall pay to the treasurer of the county in which the application is made a license fee of one hundred dollars (\$100) for each six (6) month period in which the applicant proposes to transact business. The applicant shall thereupon file the treasurer's receipt for such payment with the auditor of the county with whom the application is filed.

(Formerly: Acts 1955, c.345, s.6.) As amended by P.L.158-1986, SEC.3; P.L.221-1993, SEC.3.

IC 25-37-1-6.5

Reduction and waiver of license fee

Sec. 6.5. (a) Notwithstanding section 6 of this chapter, a county legislative body (as defined in IC 36-1-2-9) may annually:

- (1) set the county license fee required under section 6 of this chapter in any amount that is not greater than the amount required in section 6 of this chapter; or
- (2) waive the county license fee required under section 6 of this chapter.

(b) A county legislative body that reduces or waives the county license fee under subsection (a) must inform:

- (1) the treasurer of the county; and
- (2) the auditor of the county;

whether a license fee is required to be filed with an application with the auditor for a transient merchant license and the amount of the license fee if a license fee is required.

(c) A treasurer who is informed of a fee change under subsection (b) shall:

- (1) require each applicant to submit the lesser fee set by the county legislative body; and
- (2) issue a receipt to the applicant.

(d) An applicant filing for a transient merchant license must do the following:

- (1) If filing for a transient merchant license with a county auditor who has been informed of a reduced license fee under subsection (b), the applicant must file:
 - (A) an application; and
 - (B) a receipt from the county treasurer.
- (2) If filing for a transient merchant license with a county auditor who has been informed that a license fee has been waived under subsection (b), the applicant must file only an application.

As added by P.L.221-1993, SEC.4.

IC 25-37-1-7

Issuance of license; transferability; use and validity of license;

record of licenses

Sec. 7. (a) Upon the filing of such application and after the applicant has established that he has fully complied with all the provisions of this chapter, the auditor of said county may issue to the applicant a license authorizing the said applicant to transact business as proposed in said application. Such license shall not be transferable and shall be valid only in the county where issued and shall not be valid in any town or city which has enacted an ordinance licensing transient merchants, unless a license from such city or town is also obtained. No license shall be good for more than one (1) person, unless such persons shall be copartners or employees of a firm, limited liability company, or corporation obtaining such license. No license shall be good for more than one (1) location in said county, if said transient merchant is transacting business in a building or structure in said county.

(b) The auditor shall keep a record of such license in a book provided for that purpose, which shall at all times be open to public inspection.

(c) No particular form of license shall be required to be issued by said auditor. However, any license issued shall state the name of the person, firm, limited liability company, or corporation which is licensed, and the number of days for which the license is issued.

(Formerly: Acts 1955, c.345, s.7.) As amended by Acts 1982, P.L.154, SEC.133; P.L.8-1993, SEC.402.

IC 25-37-1-8**Inventory of goods sold**

Sec. 8. Within ten (10) days after said license expires the holder thereof shall file in duplicate with the county auditor an inventory of all goods, wares and merchandise sold and the price received therefor, which inventory shall be verified by the person who filed the application for the license with the said auditor. The county auditor shall immediately after receiving such report and inventory forward a copy thereof to the Indiana department of state revenue of the state of Indiana or its successor.

(Formerly: Acts 1955, c.345, s.8.)

IC 25-37-1-9**Violations**

Sec. 9. A transient merchant who:

(1) transacts business without having first obtained a license under this chapter; or

(2) knowingly advertises, offers for sale, or sells any goods, wares, or merchandise contrary to this chapter;

commits a Class B infraction for each day a violation occurs.

(Formerly: Acts 1955, c.345, s.9.) As amended by Acts 1978, P.L.2, SEC.2564; P.L.158-1986, SEC.4.

IC 25-37-1-10

Exceptions

Sec. 10. The provisions of this chapter shall not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business nor to bona fide sale of goods, wares or merchandise by sample for future delivery, or to sheriffs, constable or other public officers selling goods, wares and merchandise according to law, nor to bona fide assignees or receivers appointed in this state selling goods, wares and merchandise for the benefit of creditors.

(Formerly: Acts 1955, c.345, s.10.) As amended by Acts 1982, P.L.154, SEC.134.

IC 25-37-1-11

Municipal authority over transient merchants

Sec. 11. (a) Towns and cities may tax, license, and regulate transient merchants and charge a fee for the transaction of business by them. Towns and cities may provide for punishment of violators, subject to the limitations of IC 36-1-3.

(b) This subsection does not apply to a county having a consolidated city. A city or town license may not be in lieu of a county license. This chapter does not supersede any ordinance regulating transient merchants.

(c) This subsection applies to a county having a consolidated city. A transient merchant is not required to obtain a county transient merchant license under this chapter. A transient merchant may not transact business in a municipality located wholly or partially within the county unless the transient merchant and the owner of the property to be offered for sale (or sold if the property is not owned by the vendor) have first obtained a license from the fiscal officer of the municipality under this chapter.

(Formerly: Acts 1955, c.345, s.11.) As amended by Acts 1978, P.L.2, SEC.2565; Acts 1981, P.L.11, SEC.131; P.L.158-1986, SEC.5; P.L.48-1991, SEC.74.

IC 25-37-1-12

Use and disposition of receipts

Sec. 12. All fees collected by a county, city, or town under this chapter shall be paid into the general fund of the county, city, or town.

(Formerly: Acts 1955, c.345, s.12.) As amended by Acts 1982, P.L.154, SEC.135; P.L.158-1986, SEC.6.

IC 25-37-1-13

Temporary association or partnership

Sec. 13. A temporary association or partnership with a person excluded from the definition of transient merchant under section 2 of this chapter does not relieve a transient merchant from complying with this chapter.

As added by P.L.158-1986, SEC.7.

IC 25-37-1-14**Veterans; license fees; counties having consolidated cities**

Sec. 14. (a) This section applies to a county having a consolidated city.

(b) A veteran who holds an honorable discharge from the armed forces of the United States is exempt from the payment of a fee for a transient merchant license issued under this chapter by a municipality located wholly or partially within the county.

(c) Upon the presentation of the veteran's certificate and papers of discharge and proof of the veteran's identity, the official designated by the municipality shall issue a transient merchant license to the veteran. A person licensed under this section shall comply with all ordinances of the county or municipality governing transient merchants.

As added by P.L.48-1991, SEC.75.

IC 25-37-1-15**Holders of registered retail merchant's certificates**

Sec. 15. A county having a population of more than seventeen thousand two hundred fifty (17,250) but less than seventeen thousand three hundred fifty (17,350) may require that the holder of a registered retail merchant's certificate under IC 6-2.5-8 obtain a transient merchant license.

As added by P.L.19-1994, SEC.16. Amended by P.L.170-2002, SEC.129; P.L.119-2012, SEC.158.